

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 584/Srt/2023 (AY: 2010-11 Quantum appeal)

ITA No. 585/Srt/2023 [AY: 2010-11 Penalty u/s 271(1)(c)]  
(Hybrid hearing)

Basant Sekhani, 202, Matru Ashish, Kazis, Gopipura, Surat, Gujarat-395001. <b>PAN No. AVOPS 2826 F</b>	Vs.	I.T.O., Ward-2(2)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Chaitali Shah, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of institution of appeals	25/08/2023
Date of hearing	01/11/2023
Date of pronouncement	01/11/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by the assessee are directed against the separate orders of National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals), (in short, the Id. CIT(A)) both dated 04/08/2023 for the Assessment Year (AY) 2010-11. In ITA No. 584/Srt/2023 the assessee has challenged the validity of addition in quantum assessment and in ITA No. 585/Srt/2023, the assessee has challenged the validity of penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short, the Act). Both the appeals are interconnected, thus, both the appeals were clubbed, heard together and are decided by consolidated order.
2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that the

assessment for A.Y. 2010-11 was completed under Section 144 r.w.s. 147 of the Act on 28/11/2017. In the quantum assessment, the Assessing Officer made addition of Rs. 55,42,730/- on account of investment in shares and added under Section 69 of the Act as unexplained investment. Simultaneously, the Assessing Officer initiated penalty under Section 271(1)(c) of the Act.

3. The assessee filed appeal before the Id. CIT(A) on 13/1/2018. Alongwith appeal, the assessee filed application for condonation of delay of 350 days in filing appeal. The assessee filed detailed affidavit explaining the cause of delay. The Id. CIT(A) has not condoned the delay, resultantly the appeal was not admitted and dismissed in limine. Similarly, there was a delay in filing appeal in penalty proceedings under Section 271(1)(c) of the Act of 176 days. Similar delay was not condoned in appeal against the penalty order. The Id. AR of the assessee submits that in fact, the assessee was not aware about the progress of assessment order. The assessee was suffering from Slip Disc problem from April, 2014 and his treatment was started in Surat. The assessee was not improving and he shifted to Bikaner, Rajasthan which is his native place. His treatment continued till 2017. In the meantime, he also suffered injury in his knee on account of rupturing of ligament and remained bed ridden and was advised complete rest. In the month of December, 2018, when the assessee visited Surat at his old residence, came to know about the various notices and passing of penalty order and assessment order which was kept by the watchman of building. The Id. AR of the assessee submits that the assessee furnished medical certificate to the appellate commissioner. The assessee also prayed that delay in filing appeal was not malafide and due to bonafide reasons.

The Id. CIT(A) instead of considering the case of assessee has sympathetically dismissed the same on technical ground of delay.

4. The Id. AR of the assessee further submits that while passing the assessment order, the Assessing Officer also levied penalty under Section 271(1)(b) and 271F of the Act on 20.04.2018. The assessee also filed appeal against such orders. In those appeal, the assessee in both of those appeals also filed similar application for condonation of delay of 270 days in both the appeals, on similar set of facts/similar plea. The Id. CIT(A)/ NFAC in such both the appeals in appeal No.ITBA/NFAC/S/250/2022-23/1050429536(1) and ITBA/NFAC/S/250/2022-23 /1050429413(1) both dated 06/03/2023 condoned the similar delay. However, on similar set of facts, the delay in present appeal was not condoned. The Id. AR of the assessee submits that the assessee has goods case on merit and will suffer irreparable loss if the delay in filing appeal before Id CIT(A) is not condoned appeal is not decided on merit. The Id. AR of the assessee submits that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice must be prevailed as has been held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs Mst. Kitiji 167 ITR 471 (SC).
5. The Id. AR of the assessee submits that as the case of assessee was not adjudicated on merit, therefore, she requested that matter may be restored back to the file of Id. CIT(A) on in alternative to the file of Assessing Officer for fresh adjudication on merit.
6. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities. The Id. Sr. DR

submits that the assessee has not shown sufficient cause for condoning the delay. The assessee has not furnished sufficient medical evidence to substantiate that either the assessee remained hospitalized or not in a position to take necessary step for filing appeal before the Id. CIT(A) in time. The cause of delay in filing appeal is not sufficient and the delay may not be condoned. To support his submission, the Id. Sr. DR for the revenue relied upon the decision of Hon'ble Apex Court Civil Appeal No.7696 of 2021 in the case of Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & Ors. However, the Id. Sr. DR for the revenue in his alternative and without prejudice submission, submits that in case the Bench is of the view that the assessee has shown sufficient cause for condoning the delay in filing appeal before the Id. CIT(A), the matter may be restored to the file of Assessing Officer and not to the file of Id. CIT(A) as the assessing officer made additions for the want of compliance also passed assessment order under section 144.

7. We have considered the submissions of both the parties and perused the record carefully. We have also gone through the case laws relied by the respective parties. We find that the assessment was completed under Section 144 of the Act by making a huge addition on account of unexplained investment in shares. The Id. CIT(A) dismissed the appeal of assessee for want of sufficient cause in filing appeal belatedly. We find that on similar set of facts, similar appeal against penalty levied under Section 271(1)(b) and in the matter of penalty under Section 271F of the Act, on similar delay was condoned by Id CIT(A)/ NFAC vide order dated 06.03.2023. Therefore, similar delay could have been condoned in the present appeal as well. We may presume that the ITBA system

may have allotted the appeal to different officer/ CIT(A) at different location, though, the appeal of individual assessee arising out of common order should have been allotted to same officer / appellate authority. Considering the fact that on similar set of facts, similar delay was condoned by the revenue authority in connected appeals and was not condoned the delay in the present matter, the delay deserves to be condoned.

8. We are conscious that the delay in quantum appeal was of 350 days, so in addition to parity, we are considering it independently. Before us, the assessee has placed certain medical prescription and evidence of admission of assessee which shows history of Slip Disc and various prescriptions of Doctors in Surat as well as Bikaner, Rajasthan. The Id AR for the assessee before us vehemently submitted that when the assessee in the month of December, 2018, visited Surat at his old residence, came to know about the various notices and passing of penalty order and assessment order which was kept by the watchman of building. We find that before Id CIT(A), the assessee filed appeal in December 2018, soon after coming to know that he has suffered additions in the assessment order. Further, we find that in filing appeal belatedly, the assessee is not going to be benefited, rather there is always chance that the delay may not be condoned, as has been in the present case. Therefore, keeping in view the principle that when the cause of substantial justice and technical considerations are pitted against each other, the cause of justice may be preferred, hence, the delay in filing appeal before the first appellate authority is condoned.

9. So far as objection of Id. Sr. DR for the revenue is concerned and reliance placed on decision of Hon'ble Supreme Court in Civil Appeal No.7696 of 2021 in the case of Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & Ors., with utmost regard to the said decision, we find that facts of the present appeal are at variance. With utmost regard the ratio of the said decision, we find that in that case, the High Court has not observed that there was any sufficient cause explaining the huge delay of 1011 days. However, in the present appeal, the assessee categorically pleaded and shown sufficient cause and in other appeals such cause was accepted by revenue. Thus, considering the facts and circumstances of the case, we condoned the delay in filing appeal before the Id. CIT(A), therefore, impugned order passed by the Id. CIT(A) dated 04/08/2023 is set aside. Further considering the facts that the assessing officer also passed the assessing order under section 144,
10. the matter is restored back to the file of Assessing Officer with direction to decide the issue afresh in accordance with law. The assessee is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all the details and his submissions and evidences on various grounds of appeal raised by him, as soon as possible, if so desired without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.
11. In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

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12. In this appeal, the Id CIT(A), while passing the impugned order not condoned the delay of 176 Days, considering the facts that we condoned the delay of 350 days in quantum assessment appeal, in filing appeal before Id CIT(A). Thus, similar delay of 176 in filing appeal before Id CIT(A) in the present appeal is also condoned with similar observation. Further, considering the facts that we have restored the quantum appeal of the assessee to the file of Assessing Officer for deciding the issue afresh, therefore, the order of penalty on the additions on which penalty under section 271(1)(c) was levied, will not survive. However, the Assessing Officer will be at liberty to initiate penalty under Section 271(1)(c) of the Act, if so warranted, in accordance with law after giving effect to the order of this Tribunal. In the result, the grounds of appeal in the present appeal is allowed.
13. In the result, appeal of the assessee is ITA No. 585/Srt/ 2023 is allowed.

Order pronounced in the open court on 1<sup>st</sup> November, 2023.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 01/11/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat